IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2006

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

Second Appeal No. 1222 of 1998
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T.M. Kuppusamy .. Appellant/1st Defendant

Versus

1. Kannammal
2. Dhanabalan
3. Muthulakshmi
4. Muthusamy
5. Parvathi .. Respondents/Plaintiffs 1 to 3/ Defendants 2,3

Second appeal under Section 100 CPC against the decree and judgment dated 05.03.1998 made in A.S. No. 106 of 1997 on the file of Principal District Judge, Erode reversing the decree and judgment dated 04.03.1997 made in O.S. No. 776 of 1994 on the file of Additional Subordinate Judge, Erode, Periyar District.

For Appellant : Mr. S.V. Jayaraman, Sr. Counsel
for Mr. Krishna Kumar

For Respondents : Mr. S. Parthasarathy
for M/s. Sarvabhauman Associates
for RR1 to 3
Mr. Jaya Ganesh for RR4 and 5

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JUDGMENT

This second appeal was not admitted and only notice was ordered by this Court. After service, it was posted today for admission.

2. The first defendant, who lost the case before the courts below is the appellant in this second appeal. The Plaintiffs/respondents 1 to 3 herein have filed O.S. No. 776 of 1994 before the Additional Subordinate Judge, Erode for specific performance, which was decreed. Appeal in A.S. No. 106 of 1997 filed by the appellant herein before the District Court, Erode, was also dismissed, hence, the present second appeal.

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3. For the sake of convenience, the parties shall be described

as they were arrayed in the suit.

4. The case of the Plaintiffs is that the suit property belonged to the first defendant and they have entered into an agreement for sale dated 23.03.1994, Ex.A1 with him for purchasing the property for a total sale consideration of Rs.3 lakhs and paid a sum of Rs.25,000/- as advance. In and by the said agreement, it is further agreed between the parties that another sum of Rs.25,000/- is to be paid by the plaintiffs within a period of three months i.e., on or before 22.06.1994 and the balance amount to be paid within ten months i.e., on or before 22.01.1995. Accordingly, the plaintiffs have paid the sum of Rs.25,000/- on 20.06.1994 to the first defendant and Ex.A2 is the endorsement made by him for having received the said sum of Rs.25,000/-. Though the plaintiffs are ready to pay the balance sale consideration of Rs.2,50,000/- and to get the sale deed executed in their favour, when they approached the first defendant, he gave evasive reply, hence, after giving notice, Ex.A3 dated 14.09.1994, they filed the suit.

5. The case of the first defendant is that he paid a sum of Rs.50,000/- to one Yasodaran, father of the second plaintiff and he committed default in monthly instalments, hence, when the same was questioned, in connivance, the sale agreement, Ex.A1 and the endorsement, A2 were created.

6. Before the trial court, the plaintiffs have marked Exs. A1 to A6 and the second plaintiff examined himself as PW1, the attestor of Ex.A1, sale agreement was examined as PW2 and the attestor of Ex.A2, endorsement was examined as PW3 and Yasodaran was examined as PW4. On behalf of the first defendant, Exs. B1 to B4 were marked and the 1st and 3rd defendants were examined as Dws 1 and 2 respectively, one Manickam and Ganesan were examined as Dws 3 and 4.

7. Considering the oral and documentary evidence, particularly Exs. A1 and A2 and the evidence of Pws 2 and 3 and after comparing the signatures of the first defendant found in Exs. A1 and A2 with Exs. A4, A5, B1 and B2, the trial court found that the signatures of the first defendant found in Ex.A1 tally with Exs. B1 and B2 and came to the conclusion that the plaintiffs have proved their case. On perusal of Ex. B1, sale agreement dated 11.03.1994 and B2, sale deed dated 08.08.1994 in favour of the 2nd and 3rd defendants, the trial court found that they were created by the defendants to forestall the claim of the plaintiffs. It is further pointed out by the trial court that the sale consideration agreed between the parties under Ex.A1 was Rs.3 lakhs, whereas, under Ex.B2, sale deed executed by the first defendant in favour of the second and third defendants, the sale consideration is only Rs.81,000/- hence, Ex.B2, sale deed is nothing but a sham and nominal.

8. On consideration of the oral and documentary evidence, the first appellate Court also compared the signatures of the first defendant found in Ex.A1, A2 with that of the one found in Exs. A4 and A5 and came to the conclusion that the signatures found in the said documents are identical and dismissed the first appeal on the

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same lines on which the trial court decreed the suit.

9. Mr. S.V. Jayaraman, learned Senior counsel appearing for the appellant submitted that the first appellate Court committed an error in comparing the signatures of the defendants contained in Exs. A1 and A2 with that of the signatures found in Exs. A4 and A5 but failed to compare the same with Exs. B1 and B2. If the said comparision is made, definitely the first appellate Court would have come to the conclusion that the signatures found in Exs. A1 and A2 and that of the one found in Exs. B1 and B2 are different, but it failed, however, the first appellate Court ought not to have compared the signatures without seeking expert opinion and prayed for setting aside the decree and judgment of the courts below.

10. On the above contention of the learned Senior counsel for the appellant, this Court heard the arguments of the learned counsel for the respondents 1 to 3 as well as the counsel for respondents 4 and 5 and perused the material records.

11. It is to be remembered that the trial court, while decreeing the suit relied on the evidence of Pws 2 and 3, who are attesting witnesses of Exs. A1 and A2 respectively and came to the conclusion that Exs. A1 and A2 are proved by the plaintiffs. The first appellate Court, not on mere comparision of the signature of the first defendant and also on careful reading of the evidence of Pws 2 and 3 found that Exs. A1 and A2 were proved.

12. Section 73 of the Indian Evidence Act although specifically empowers the Court to compare the disputed writings with the specimen/admitted writings shown to be genuine, prudence demands that the Court should be extremely slow in venturing a opinion on the basis of a mere comparision, more so, if the quality of evidence in respect of specimen, admitted writings was not of high standard.

13. Considering the above said provisions of Law and the facts and circumstance of the case, this Court is of the considered view that the comparision made by the courts below are justified and the conclusion arrived by it, based on oral and documentary evidence are valid.

14. The concurrent finding of the courts below that the plaintiffs have proved Exs. A1 and A2 and Ex.B2 is a sham and nominal one, created for the purpose of forestalling the claim of the plaintiffs is confirmed. There is no question of law, much less a substantial question of law involved in this second appeal.

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15. In the result, the decree and judgment of the courts below are confirmed. The second appeal is dismissed as devoid of merits. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Principal District Judge
   Erode

2. The Additional Subordinate Judge
   Sub Court
   Erode, Periyar District

3. The Section Officer
   Vernacular Records Section
   High Court, Madras

+1cc to M/s. Sarvabhauman Associates Sr 60422

+1cc to Mr.D.Krishna Kumar, Advocate Sr 60275

GM (CO)
km/4.1.

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